REMARKS

Claims 1, 3-5, 7-11, 13, 15 and 16 are pending.

Claims 3 and 7 are allowed.

According to the Office Action, claims 9 and 13 are rejected under 35 USC 101.

Claim 9 has been amended to clarify that the reading and/or writing is to/from the record carrier. A "device" cannot simply be software in order to read and/or write to a record carrier. Furthermore, claim 9 has been amended to recite a "processor for decrypting and/or encrypting."

Claim 13 has been amended to tie the recited features to a particular machine by reciting that the reading and/or writing is to/from the record carrier by a device. As only a particular machine (device) can read/write to/from a record carrier, it is respectfully submitted that the claim is tied to a particular machine.

For at least the foregoing reasons it is respectfully requested that this rejection of claims 9 and 13 be withdrawn.

Further according to the Office Action, claims 1, 4, 5, 8 – 11, 13, 15 and 16 are rejected under 35 USC 102(b) as being anticipated by Kulinets (US Patent 6,005,940).

Claim 1 includes, in part, the features of: wherein the record carrier is designed such that both the first (HCK) and second (UCID) parts of decryption information are readable from the record carrier. Emphasis added.

Kulinets clearly shows "an optical disk carrier (ODC) 1 which may be a DVD, audio CD or CD-ROM which is read by an optical scanning head 21. The optical disk data carrier 1 includes a transponder 2 fixed to the disk carrier 1 having a transponder microelectronic chip 3 connected to an antenna 4." Emphasis added. (see Fig. 1, col. 2, line 65 to col. 3, line 10).

One skilled in the art recognizes that in Kulinets the record carrier includes the information on the optical disc and the transponder.

The transponder 2 includes a deciphering engine 10 that implements a deciphering algorithm D to be used in deriving the frame decryption key FDK (col. 3, lines 31-41).

Furthermore, Kulinets make clear that: "As will be evident when describing the details of transponder 2, the stored information necessary for calculating the decryption key FDK may not be read from transponder 2" (emphasis added, col. 3, lines 48-44). Therefore, the decryption information is not readable from the record carrier of Kulinets.

Furthermore, the transponder 2 of Kulinets has a non-volatile memory 8 storing the secret deciphering key DKA, and "the non-volatile memory 8 is configured such that its contents may not be read from the non-volatile memory 8, thereby maintaining secrecy and avoiding an illicit decryption of ODC 1" (Kulinets, col. 3, lines 56 - 65). It is at the core of Kulinets that the secret deciphering key cannot be read from the record carrier.

Kulinets is clear that the record carrier includes the optical disk and "a transponder 2 fixed to the disk carrier" and that the stored information necessary for calculating the decryption key FDK may not be read from transponder 2.

Therefore, one ordinarily skilled in the art would only arrive at the conclusion that the contents of the transponder "may not be read" therefrom. Thus, Kulinets cannot anticipate applicant's claimed invention, which recites in claim 1: "wherein the record carrier is designed such that both the first (HCK) and second (UCID) parts of decryption information are readable from the record carrier."

In the "Response to Arguments" section of the Office action it is argued that Kulinets does not operate as Kulinets clearly teaches. The Office argues that the contents must be read from the memory 8.

However, Applicant respectfully submit that Kulinets is being misinterpreted by the Office. Kulinets clearly describes that the deciphering key DKa cannot be read from the non-volatile memory 8. (see Kulinets col. 3).

Furthermore, Col. 6, lines 37-43 includes: "There is no means to read the deciphering key DKa back from the non-volatile memory 8." (see Fig. 8).

What Kulinets is describing is: "The deciphering key DKa is stored in the non-volatile memory 8 of the transponder 2 and can not be read from outside the transponder 2" (col. 7, lines 25-32). The transponder is part of the record carrier (see Fig. 1), therefore, claim 1 is not anticipated by Kulinets.

Thus, as Applicant's claims rely on the fact that the reading/writing device can access such second part of decryption information, the invention clearly is distinguishable over Kulinets. Note that such readability of the second part of decryption information is contained in the original device claims 9 - 11, as well as in system claim 12 and method claim 13 (see the feature "reading and/or writing the second part of decryption information (IJCID)."

Thus, in Kulinets the transponder on the record carrier calculates the complete decryption information and then transmits it to the reader, while according to Applicant's claim 1 the reader also reads the second part of decryption information and performs the calculation of the complete decryption information in the reader only. Accordingly, the claimed invention is unobvious over Kulinets alone as well as in combination with the further art on record and the skilled person's general knowledge.

According to the binding case law established by U.S. Court of Appeals for the Federal Circuit and its predecessor Court (as interpreted in Section 2131 of the MPEP), to anticipate a claim, the reference must teach each and every element of that claim. As discussed above, Kulinets is deficient in teaching each and every element of Applicant's claim 1. It is, therefore, respectfully submitted that independent claim 1 is not anticipated by Kulinets.

Claims 9 and 13 contain features similar to those in claim 1. Hence, the analysis of independent claims 9 and 13 is similar to claim 1, as presented hereinabove. To avoid repetition, claims 19 and 13 will not be discussed in detail with the understanding that they are patentable at least for the same reasons as claim 1.

Claims 4, 5, 8, 10, 11, 15 and 16 depend from independent claims, which have been shown to be allowable over the reference. Accordingly, claims 4, 5, 8, 10, 11, 15 and 16 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein.

An earnest effort has been made to be fully responsive to the examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

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